United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

478

No. 21,954

PHYLLIS TAYLOR,

Appellant

v

PETER BECKAS,

Appellee.

APPEAL FROM THE DISTRICT OF COLUMBIA
COURT OF APPEALS No. 4175

BRIEF FOR APPELLANT

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COUNSEL FOR APPELLANT

STATEMENT OF QUESTIONS PRESENTED

The first question is:

1. Below appellant filed a complaint against appellee charging physical assault and demanding damages in the amount of $10,000.00

   The appellant below asked the Court to award exemplary or punitive damages in the amount of $10,000.

Quaere:

Where the statutory jurisdiction is limited to $10,000.00 as to general damages; does the statute relating to jurisdictional amount prohibit consideration of the case, absolutely, because of the prayer for exemplary or punitive damages?

2. Is the subject of punitive or exemplary damages included as part of the jurisdictional situation set forth in the statute, or is it an aspect of the entire cause with respect to which the statutory jurisdictional limit does not apply?

I N D E X

CASES CITED

STATUTES

TEXT BOOKS

UNITED STATES COURT OF APPEALS

For The District Of Columbia Circuit

No. 21,954

PHYLLIS TAYLOR, Appellant,

v

PETER BECKAS, Appellee

APPEAL FROM THE DISTRICT OF COLUMBIA
COURT OF APPEALS, No. 4173.

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The appellant alleges the jurisdiction of this Court in the present instant is established by Title 11, Section 773, District of Columbia Code, 1961 Edition.

STATEMENT OF THE CASE

On January 27, 1965, the plaintiff sued defendant in the District of Columbia Court of General Sessions for damages arising out of an alleged assault on March 17, 1964. The plaintiff asked for judgment against defendant in the sum of $10,000.00 as general damages and $10,000.00 as exemplary damages.

Defendant, answering, asserted that the Court lacked jurisdiction the total amount claimed being in excess of the jurisdictional limits of the Court of General Sessions.

Subsequently, at a pretrial hearing the Trial Judge dismissed the action for lack of jurisdiction. His dismissal did not recite the reason underlying his judgment.

At the pretrial hearing,and prior to the ruling of the Trial Court, plaintiff sought to amend the complaint, to amend the ad damnum clause so as to proceed on the general damage claim alone striking the claim for exemplary damages from the case. This request was denied. Appealing the plaintiff contended that the claim for compensatory damages did not bar plaintiff's right to file an additional claim for exemplary damages, and that under the law as set forth in the text books and cases it was error to hold that the claim for exemplary damages deprived the Trial Court of jurisdiction.

The Court of Appeals below upheld the judgment of the Trial Court and the appellant there filed a petition in this Court for leave to file an appeal herein which was granted, and the instant appeal follows:

STATUTES INVOLVED

D.C. Code, 1965 Edition.

> §11-961. Civil Jurisdiction.
>
> (a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of General Sessions has exclusive jurisdiction of civil actions, including civil actions against executors, administrators and others fiduciaries, in which the claimed value of personal property or the debt or damages claimed does not exceed the sum of $10,000 exclusive of interest and costs, as well as of all cross-claims and counterclaims interposed in all actions over which it has jurisdiction, regardless of the amount involved.

STATEMENT OF POINTS

I. The statute defining the jurisdiction of the District of Columbia Court of General Sessions, does not declare that actions for damages wherein exemplary or punitive damages are claimed may not exceed the sum of $10,000.00 where compensatory damages in the amount of $10,000.00 are also claimed.

2. Exemplary or punitive damages are allowed on grounds of public policy; they speak in terms of punishment and warning and of deterrent; and are not governed by the laws relating to compensatory damages.

The injury which is the subject matter of the action is two-fold:

(a) That act which is capable of being measured in a money standard as to damages; and

(b) That action or wrong done which is incapable of being measured by a money standard but is assessed as punishment to the tort-feasor and as a warning to others.

SUMMARY OF ARGUMENT

In summary, the appellant's argument contends that here, several causes of action arose from the single transaction stated in the complaint -- the one measured in money terms as compensatory damages; the other - not measured in money terms of damage but meaured in terms of punishment, deterrent and warning under the aegis of public policy.

That the case in its entirety was within the jurisdiction of the court below.

Discussing the nature and elements of exemplary or punitive damages the text books speak in this wise:

25 C.J.S. p. 1107, sec. 117 (1):

> The theory of exemplary, punitive, or vindictive damages, or "smart money", as they are sometimes called, involves a blending of the interests of society in general with those of the aggrieved individual in particular. According to the more generally accepted doctrine, such damages are allowednot because of any special merit in the injured party's case, but are awarded by way of punishment to the offender, and as a deterrend, warning or example to the offender; and to others. * * *.

In 22 Am Jur 2d p. 323, sec. 237, the following appears:

> In most jurisdictions exemplary damages are allowed and awarded as a punishment to the defendant and as a warning and example to deter him and others from committing like offenses in the future. Under this theory such damages are allowed on grounds of public policy and in the interest of society and for the public benefit; not as compensatory damages, but rather in addition to such damages. It has beensaid that they are imposed in view of the enormity of the offense rather than as a meausre of compensation to the plaintiff. However, according to some of the cases, exemplary damages may properly partake of both a punitive and exemplary character inasmuch as in practice they are given both as compensation to the plaintiff and at the same time as a punishment for the defendant and a warning to others.

Below, in United Securities Corp. v Franklin, 180 A 2d 515, 511, the court said:

> (16-19) The question remains whether the trial court properly awarded defendants punitive damages for the fraud in the sale and wrongful repossession. The assessment of exemplary damages rested in the discretion of the trial court sitting without a jury. Riss & Co. v Feldman, D. C. Mun. App. 79A 2d 566. It could award such damages if the wrong was of such a nature that an example, by way of deterrent and warning, was justified in the public interest. District Motor Co. v Rodill, D.C. Mun. App. 88A 2d 489. Punitive damages may be assessed where the act complained of is characterized by circumstances of aggravation such as malice, and an injury inflicted by fraud has been termed "necessarily malicious". Sedgwick,

Damages, sec. 367 (9th ed,), quoted in District Motor Co. v Rodill, supra, 88A 2d at 493. And it is settled in the Federal Courts that such damages may be awarded in the absence of compensatory damages. * * *.

These statements support the contention that the wrongs done are separate and that the matter of damages as to each are separate and apart and that an award in the sum of $10,000 for one does not prohibit a similar sward for the other.

The rule asserted below may not legally destroy one cause of action merely because there has been a maximum recovery as to the other.

In Collins v Brown, 268 F Supp. 198, 201, the United States District Court for the District of Columbia, said, in part:

(6,7) The purpose of punishment, be it a criminal sentence, a civil penalty, or punitive damages, is not to inflict suffering or to impose a loss on the offender. Its object is to act as a deterrent: first to discourage the offender himself from repeating his transgression: and, second to deter others from doing likewise. When punitive damages are awarded, they must be large enough to act as an effective deterrent. They should not be any larger.

In Afro American Publishing Co. v Jaffee , 336 F 2d, 549, 662, 125 U.S. App. D.C., this court said:

(31) * * * in Day v Woodworth, supra, 54 US at 371 that these damages are provided because "the wrong done to the plaintiff is incapable of being measured by a money standard", and that the infliction of "smart money * * * by way of punishment or example * * * has always been left to the discretion of the jury as the degree * * * must depend on the peculiar circumstances of each case." The discretion of the jury is enhanced by the doctrine that punitive damages need not have any necessary relation to compensatory damages. Wardman-Justice Motors Co. v Petrie, 59 App. D.C. 262, 31 F 2d 512, 69 ALR 648.

In Scott v Donald, 17 S Ct. 265, 41 L. ed 632, 635, 638, 639, 165 U.S. 86, 89, 90, the Supreme Court said:

> Damages have been defined to be the compensation which the law will award for an injury done, and are said to be exemplary and allowable in excess of actual loss, where a tort is aggravated by evil motive, actual malice, deliberate violence or oppression. While some courts and text writers have questioned the soundness of this doctrine, it has been accepted in England, in most of the States of this Union, and has received the sanction of this court.
>
> * * * The intentional, malicious and repeated interference by the defendants with the exercise of personal rights and privileges secured to the plaintiff by the Constitution of the United States, as alleged in the complaint constitutes, as we think, a wrong and injury not the subject of compensation by a mere money standard, but fairly within the doctrine of the cases wherein exemplary damages have been allowed. Those allegations of the complaints, though denied in the answers, have been sustained by the tribunal -- in these cases the court, a jury having been waived -- which had to pass upon the issues of fact.
>
> That the amount of recovery in each case fell short of the sum of two thousand dollars did not withdraw the cases from the jurisdiction of the court. As the declarations alleged damages in the sum of six thousand dollars, and as a jury would be at liberty to find any amount not in excess of that sum, the jurisdiction, having once validly attached, would not be defeated by the fact that recoveries were for sums less than two thousand dollars. As said in the case of Day v Woodworth, above cited "The amount has always been left to the discretion of the jury, as the degree of punishment to be then inflicted must depend on the particular circumstances of each case." Barry v Edmunds, 116 US 550, was a fully considered case, and it was there held that a suit cannot properly be dismissed by a Circuit Court of the United States as not substantially involving a controversy within the jurisdiction of the court, unless the facts were made to appear on the record, create a legal certainty of that conclusion; that where exemplary damages beyond the sum necessary to give a Circuit Court of the United States jurisdiction are

claimed in an action for a malicious tresspass, the court should not dismiss the case for want of jurisdiction simply because the record shows that the actual injury caused to the plaintiff by thetrespass w as less than the jurisdictional amount, and that it is settled in this court that in an action for a trespass accompanied with malice the plaintiff may recover exemplary damages in excess of the amount of his injuries if the ad damnum is properly laid.

Reasoning from the declarations set forth in the cases cited, supra, appellant contends that the state of the law permits recovery in the maximum amount for compensatory damages - and permits recovery for the maximum amount for exemplary or punitive damages.

CONCLUSION

The appellant herein is entitled to her day in court, under each and both of the counts in her complaint - and the decision of the trier of facts as to damages, as to each count, must be available if there is to be a fair trial under due process of law.

Respectfully submitted

T. Emmett McKenzie,
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CERTIFICATE OF SERVICE

On this 7th day of April, 1969, I mailed copy of the foregoing brief to counsel for appellee, Ralph Stein, Esq.,400 First St. N.W. Washington, D. C. in postage prepaid cover.

T. Emmett McKenzie

PHYLLIS TAYLOR,

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TABLE OF CASES

STATUTES

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 21,954

PHYLLIS TAYLOR,
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vs.

PETER BECKAS,
Appellee

APPEAL FROM THE DISTRICT OF COLUMBIA
COURT OF APPEALS, No. 4175

BRIEF FOR APPELLEE

STATEMENT OF ISSUES PRESENTED

That in the opinion of appellee, the questions are:

1. Did the trial court properly dismiss appellant's case at pretrial because the complaint sought damages totaling $ 20,000.00 in the District of Columbia Court of General Sessions?

2. Did the trial court lack authority to permit an amendment to the complaint filed herein?

3. Did the trial court abuse its discretion in refusing to allow an amendment to the complaint filed herein?

COUNTERSTATEMENT OF THE CASE

On January 27, 1965, plaintiff sued defendant in the District of Columbia Court of General Sessions for damages arising out of an alleged assault on March 17, 1964. The complaint prayed for "judgment against

defendant in the sum of $ 10,000.00 as general damages, and $ 10,000.00 as exemplary damages." On February 19, 1965, answer was filed by the defendant, contending, among other defenses, that the "defendant denies that the Court has jurisdiction, the amount claimed being beyond the jurisdictional limits of this Court." The plaintiff took no action to correct the alleged jurisdictional defect. Some eighteen months later at the pre-trial hearing, the cause was dismissed for lack of jurisdiction, "it appearing to the court that the aggregate claim therein, is for $ 20,000.00, the cause is dismissed for lack of jurisdiction." Then, after considering argument on the question as to whether the court had discretion to permit a reduction of the ad damnum to bring the case within the jurisdictional limits of the Court, it affirmed the entry of dismissal for lack of jurisdiction as of August 25, 1966. The trial judge did not state whether he predicated his decision of dismissal on the ground that he lacked authority to allow a reduction of the ad damnum, or, whether he had the discretion to do so, but was refusing to exercise such discretion. The decision of the trial Court was affirmed by the District of Columbia Court of Appeals, and this appeal followed by the Appellant.

SUMMARY OF ARGUMENT

The appellee's argument contends that a claim for $ 10,000.00 as general damages and $ 10,000.00 for exemplary damages filed in The District of Columbia Court of General Sessions on behalf of one plaintiff arising out of the same transaction, exceeds the jurisdictional limits of that court, and that the court has no alternative but to dismiss the suit. If, as is contended by appellant, the court had discretion to allow an amendment to bestow jurisdiction on the court, that amendment was addressed to the sound discretion of the lower court judge, and under the circumstances of delay and laches exhibited by the appellant, it was not an abuse of discretion to dissallow such an amendment.

ARGUMENT
(a)

THE DAMAGES CLAIMED EXCEEDED THE JURISDICTION OF THE LOWER COURT

The District of Columbia Court of General Sessions is a Court of limited jurisdiction and in civil actions for damages is limited to cases where the claim does not exceed $ 10,000.00. This limitation is found in D.C. Code, Title 11, Sec. 961, 1967 Ed:

> (a) In addition to other jurisdiction conferred upon it by law, the District of Columbia Court of General Sessions has exclusive jurisdiction of civil actions - - - - - - - - -, in which the claimed value of personal property or the debt or damages claimed does not exceed the sum of $ 10,000.00 -.

The appellant's case, filed in the District of Columbia Court of General Sessions, sought relief in the amount of $ 20,000.00; $ 10,000.00 compensatory damages and $ 10,000.00 in punitive damages, and thus clearly exceeded the jurisdictional limits of that Court. In Reeves v. Yale Transport Corp., D.C. Mun. App., 128 A.2d 792 (1957) the dismissal of a complaint alleging four separate assaults and a slander was sustained because the total damages sought exeeded the trial court's jurisdictional limit, although no single count demanded more than the permissible limit. All claims in the present case arose out of a single alleged assault and were properly included in a single action. It would appear that the test is the total amount of the damages claimed by the plaintiff and not what a jury might have rendered by way of a verdict, and, applying this test, it is evident that the claim herein exceeded the court's jurisdictional limit and was properly dismissed.

ARGUMENT
(b)

THE LOWER COURT LACKED AUTHORITY TO PERMIT A REDUCTION IN THE RELIEF CLAIMED TO BRING THE CASE WITHIN THE JURISDICTIONAL LIMITS.

At the hearing before the trial court, when it became obvious that that court lacked jurisdiction because the damages claimed exceeded the sum of $ 10,000.00, the appellant orally requested an amendment to the complaint to bestow jurisdiction. Without stating whether he

concluded that he lacked such authority, or had the necessary discretion but was refusing to exercise it, the court dismissed the cause of action. It is submitted that the court below lacked the authority to allow the requested reduction based on the following reasoning:

> "If a plaintiff at the time he files his complaint has no cause of action, he cannot by amendment or supplemental complaint introduce a cause of action that accrues thereafter even though it arises out of the same transaction that is the subject of the original complaint. A suit which is prematurely brought cannot be maintained, even if the cause of action has accrued by the time the case is called for trial, nor can an amendment in such a case set up a cause of action which has not accrued at the time the original petition was filed." Werber vs. Atkinson, D.C. Mun. App., 84 A. 2d 111, 113 (1951)

It is argued that since the court below never acquired jurisdiction over the instant cause, it cannot assume jurisdiction for any purpose, such as allowing amendments which would bestow jurisdiction it never possessed, but, that the proper procedure would be only for a dismissal of the cause, as was done here. It would appear that this argument was adopted by one of the concurring opinions in Fox vs. Shannon & Luchs Company of Washington, Inc. Dist. of Col. Ct. of App., 236 A. 2d 60, (1967). There it was stated by Hood, Chief Judge:

> "In the present case we deal with a complete lack of jurisdiction and I understand the rule to be that where a court lacks jurisdicition of a case, its only power over the case is to dismiss for lack of jurisdiction. It has no power to permit an amendment. '"An amendment presupposes jurisdiction of the case."' Hodge v. Williams, 22 How. 87, 88, 16 L. Ed. 237 (1859). And so it is that a '"court has no power to allow an amendment conferring jurisdiciton, since that in itself would be an exercise of jurisdiction."' Willing v Provident Trust Co., 21 F. Supp. 237, 238 (D.C.E.D. Pa. 1937). The trial court is one of limited jurisdiciton. When a complaint is filed claiming in excess of the court's jurisdiciton, no jurisdicti on attaches. '"No subsequent amendment will confer what has never been acquired."' Byrne v. Padden, 248 N.Y. 243, 247, 162 N.E. 20,21 (1928)."

The District of Columbia Court of Appeals sustained its affirmance of the trial court on the basis of its decision in the aforementioned Fox Case as per its memorandum opinion in the instant case dated May 8, 1968.

All of these arguments would seem to be strengthened when studied in the light of District of Columbia Court of General Sessions Court Rules, particularly Rule 12 (h)(3) which is as follows:

> (3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

ARGUMENT
(c)

THE LOWER COURT DID NOT ABUSE ITS DISCRETION BY REFUSING TO ALLOW AN AMENDMENT TO THE COMPLAINT BESTOWING JURISDICTION.

If the lower court was with jurisdiction to allow the proposed oral amendment as suggested by the appellant, if the change requested in the pleading was allowable at all, it was addressed to the sound discretion of that court. In this connection it is pointed out that:

> "Rule 15 of the Court of General Sessions - identical to Rule 15 of the Federal Rules of Civil Procedure - gives the trial court wide discretion in the allowance of amendments both before and during trial. In the absence of manifest error, amounting to an abuse of that discretion, the decision of the trial court to grant or deny such motion is not reviewable on appeal." Vasaio vs. Campitelli, 222 A.2d 710. (1966)

and further:

> "Unquestionably, Rule 15(a) of the Municipal Court Civil Rules permits nroad latitude in the amendment of pleadings at any stage of the casae. However, whether or not leave to amend should be granted is a matter addressed to the sond discretion of the trial court, and in the absence of abuse of this discretion the matter is not reviewable on appeal. In this instance the amendment di little more than seek increased damages, and it was offered some five months after both defendant's answer and plaintiff's responsive pleading to the counterclaim were filed. No reasonable explanation is offered for the delay in seeking the amendment." Simon vs. Robinson, 135 A.2d 652. (1957).

In the instant case it is pointed out that ample opportunity was afforded the appellant to secure the relief requested prior to the dismissal. Undue delay and laches must have been considered by the lower court in refusing to exercise its discretion in allowing the proposed amendment, since the defense was specifically raised in the answer filed on February 19, 1965, although such practice is not required.

CONCLUSION

The trial court properly dismissed the complaint below.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that I have on this 5th day of May, 1969 mailed copy of the foregoing brief of appellee to counsel for appellant, T. Emmett McKenzie, Esq., 412 -5th- Street, N.W., Washington, D.C., postage prepaid.

Ralph Stein